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Re: Petition for Reconsideration - Report and Order for Docket 01-338, FCC 03-36

To: Chairman Michael Powell

*Statement of Petition*

I hereby request the FCC Commission reconsider portions of their Report and Order for the Triennial Review process Docket 01-338, filed on February 20, 2003. Specifically I request a limited review of the removal of Line Sharing as an Unbundled Network Element (UNE) and its phase out within 3 years. I also request that the Commission reconsider its adoption for UNE relief for Hybrid Loops in Broadband Applications.

*Reasons to Accept Review*

***Line - Sharing***

First, it is in the general public's best interest to reconsider your adoption of FCC 03-36 Order. The line sharing ruling that four commissioners dissented on unduly puts excessive burden on current DSL users of line sharing to help pay for broadband expansion. Current consumers of DSL are being targeted to pay for the expansion of broadband. Not only does this affect the consumers of CLEC based DSL users, but it also affects ILEC DSL consumers whose competitive rates are now in jeopardy. Second, the petition should be granted in the best interests of all companies involved. The original line-sharing remand is currently at the Supreme Court of the United States. The Commission should act today in the best interest of all parties and review the issue without the need for costly legal battles that eventually get passed on to the consumer.

Thirdly, the current proposal subverts all previous FCC orders on Line Sharing to date. Prior FCC commissions have justly ruled that using the high-frequency portion of the loop is an impaired Unbundled Network Element. The Triennial Review record contains no evidence that Lines Sharing is not an Unbundled Network Element and that *consumers* are not impaired without access.

### ***Hybrid Facilities***

The Commission should review its Hybrid Facilities decision with regard to broadband deployment. Hybrid remote terminals have been used by the ILEC's to expand their broadband capabilities for years. ILEC's will only invest in remote terminals to expand their footprint to additional markets. Removal of Remote Terminals as an Unbundled Network Element eliminates 20% of the nations choice for competitive DSL service. The current ruling also subverts the benefits to consumers for all additional Remote Terminals deployed in the future. Once again, the Triennial Review contains no evidence that Hybrid facilities are not an Unbundled Network Element that competitive carriers AND *consumers* are not impaired without.

### **Conclusions**

Both proposed FCC rules violate the faithful execution of the Telecommunications Act of 1996. Both rules ignore all previous FCC Commissions orders that have stated both are impaired Unbundled Network Elements. Both rules ignore the basic principal that impairment cannot be overlooked even when the Commission believes it's for a better good. Both rules directly contradict the Wirelines Bureau's core principal that the "The Wireline Competition Bureau's overall objectives include: ensuring ***choice, opportunity,*** and ***fairness*** in the development of wireline telecommunications services and markets". The consumer bore the brunt of this FCC ruling. The commission should seek immediate reconsideration of these portions of their ruling.

Respectfully submitted,

Jeffrey Bower